

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

Bonita Johnson,	)	
	)	
Plaintiff,	)	
	)	Case No. _____
v.	)	
	)	<b>COMPLAINT</b>
Capital One Bank (USA), N.A.,	)	
	)	<b>Jury Trial Demanded</b>
Defendant.	)	
_____	)	

**NATURE OF ACTION**

1. This is an action brought pursuant to the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

**JURISDICTION AND VENUE**

2. This Court has jurisdiction pursuant to 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), as the acts and transactions giving rise to Plaintiff's action occurred in this district, Plaintiff resides in this district, and Defendant transacts business in this district.

**PARTIES**

4. Plaintiff Bonita Johnson ("Plaintiff") is a natural person who at all relevant times resided in the State of Michigan, County of Wayne, and City of Detroit.

5. Defendant Capital One Bank (USA), N.A. ("Defendant") is a national bank

located at 1680 Capital One Drive in McLean, Virginia, who at all relevant times, was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff. Defendant may be served through its registered agent, Corporation Service Company, 11 South 12th Street, Richmond, Virginia 23218.

### **FACTUAL ALLEGATIONS**

6. Prior to April 2013, Defendant began placing calls to Plaintiff’s cellular telephone.

7. Plaintiff sent Defendant written correspondence dated April 10, 2013, demanding that Defendant cease and desist from placing any and all further calls to Plaintiff. A copy of the April 10, 2013 correspondence is attached as Exhibit “A”.

8. Defendant responded to Plaintiff’s April 10, 2013 written correspondence with written correspondence dated April 17, 2013. In Defendant’s April 17, 2013 written correspondence, it advised Plaintiff that “we have removed your telephone number from our calling list and have ceased written communication regarding the collection of this debt.” A copy of Defendant’s April 17, 2013 correspondence is attached hereto as Exhibit “B.”

9. Despite Plaintiff’s revocation of consent for Defendant to place any telephone calls to Plaintiff, and Defendant’s confirmation that it was complying with Plaintiff’s request, Defendant, on its own or through an agent, placed multiple non-emergency calls to Plaintiff’s cellular telephone, including, but not limited to, the

following dates and times:

- 1) April 12, 2013 at 8:47 A.M.;
- 2) April 12, 2013 at 10:36 A.M.;
- 3) April 12, 2013 at 11:49 A.M.;
- 4) April 12, 2013 at 6:40 P.M.;
- 5) April 12, 2013 at 6:44 P.M.;
- 6) April 13, 2013 at 10:35 A.M.;
- 7) April 13, 2013 at 3:27 P.M.;
- 8) April 14, 2013 at 10:52 A.M.;
- 9) April 14, 2013 at 5:08 P.M.;
- 10) April 15, 2013 at 10:22 A.M.;
- 11) April 15, 2013 at 12:02 P.M.;
- 12) April 15, 2013 at 8:06 P.M.;
- 13) April 16, 2013 at 11:16 A.M.;
- 14) April 16, 2013 at 2:46 P.M.;
- 15) April 17, 2013 at 6:39 P.M.;
- 16) April 17, 2013 at 7:17 P.M.;
- 17) April 17, 2013 at 7:56 P.M.;
- 18) April 18, 2013 at 8:37 A.M.;
- 19) April 19, 2013 at 9:22 A.M.;
- 20) April 25, 2013 at 6:57 P.M.;
- 21) April 25, 2013 at 8:48 P.M.;
- 22) April 26, 2013 at 8:26 A.M.;
- 23) April 26, 2013 at 10:34 A.M.;
- 24) April 26, 2013 at 12:11 P.M.;
- 25) April 27, 2013 at 6:12 P.M.;
- 26) April 27, 2013 at 7:42 P.M.;
- 27) April 28, 2013 at 8:34 A.M.;
- 28) April 28, 2013 at 5:14 P.M.;
- 29) April 28, 2013 at 7:59 P.M.;
- 30) April 29, 2013 at 9:35 A.M.;
- 31) April 29, 2013 at 10:54 A.M.;
- 32) April 29, 2013 at 8:27 P.M.;
- 33) April 30, 2013 at 8:42 A.M.;
- 34) April 30, 2013 at 12:24 P.M.;
- 35) April 30, 2013 at 7:31 P.M.;
- 36) April 30, 2013 at 8:29 P.M.;
- 37) May 1, 2013 at 9:45 A.M.;
- 38) May 4, 2013 at 10:32 A.M.;

39)May 6, 2013 at 4:04 P.M.;  
40)May 7, 2013 at 8:42 A.M.;  
41)May 7, 2013 at 9:50 A.M.;  
42)May 7, 2013 at 8:33 P.M.;  
43)May 8, 2013 at 8:54 A.M.;  
44)May 8, 2013 at 10:49 A.M.;  
45)May 9, 2013 at 9:47 A.M.;  
46)May 10, 2013 at 8:21 A.M.;  
47)May 10, 2013 at 10:05 A.M.;  
48)May 10, 2013 at 12:47 P.M.;  
49)May 11, 2013 at 8:47 A.M.;  
50)May 11, 2013 at 10:58 A.M.;  
51)May 11, 2013 at 12:16 P.M.;  
52)May 12, 2013 at 11:54 A.M.;  
53)May 12, 2013 at 7:10 P.M.;  
54)May 13, 2013 at 8:41 P.M.;  
55)May 13, 2013 at 9:55 A.M.;  
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72)May 18, 2013 at 8:30 A.M.;  
73)May 18, 2013 at 10:03 A.M.;  
74)May 18, 2013 at 10:56 A.M.;  
75)May 19, 2013 at 8:55 A.M.;  
76)May 20, 2013 at 9:23 A.M.;  
77)May 21, 2013 at 9:26 A.M.;  
78)May 21, 2013 at 11:58 A.M.;

- 79) May 21, 2013 at 4:46 P.M.;
- 80) May 22, 2013 at 8:17 A.M.;
- 81) May 22, 2013 at 8:43 A.M.;
- 82) May 22, 2013 at 10:14 A.M.;
- 83) May 22, 2013 at 6:01 P.M.;
- 84) May 22, 2013 at 8:43 P.M.;
- 85) May 23, 2013 at 9:33 A.M.;
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- 87) May 24, 2013 at 8:44 A.M.;
- 88) May 24, 2013 at 10:22 A.M.;
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375) September 8, 2013 at 12:41 P.M.;  
376) September 8, 2013 at 3:43 P.M.;  
377) September 9, 2013 at 8:54 A.M.; and  
378) September 9, 2013 at 5:02 P.M.

10. Upon information and good-faith belief, the telephone calls identified above were placed to Plaintiff's cellular telephone number using an automatic telephone dialing system.

11. Upon information and good-faith belief, Defendant had knowledge that it was using an automatic telephone dialing system to make and/or place each of the telephone calls identified above.

12. Defendant did not place any telephone calls to Plaintiff for emergency purposes.

13. Defendant did not have Plaintiff's prior express consent to make any telephone calls to Plaintiff's cellular telephone number.

14. Upon information and good-faith belief, Defendant placed the telephone calls to Plaintiff identified above voluntarily.

15. Upon information and good-faith belief, Defendant placed the telephone calls to Plaintiff identified above under its own free will.

16. Upon information and good-faith belief, Defendant intended to use an automatic telephone dialing system to make and/or place each of the telephone calls identified above.

17. Defendant's business records may show that it made additional calls to Plaintiff's cellular telephone other than those specifically identified herein using an automatic telephone dialing system

18. During the above-referenced April 12, 2013 at 10:36 A.M.; April 13, 2013 at 3:27 P.M.; and April 14, 2013 at 10:52 A.M. telephone calls, Defendant delivered a voicemail message to Plaintiff using an artificial or pre-recorded voice. Defendant's business records may show that it made additional calls to Plaintiff's cellular telephone other than those specifically identified in this paragraph where it delivered a voicemail message using an artificial or pre-recorded voice.

19. Upon information and good-faith belief, Defendant maintains business records that show all calls Defendant placed to Plaintiff's cellular telephone number.

**COUNT I - VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)**

20. Plaintiff repeats and re-alleges each and every factual allegation in paragraphs 1-19.

21. Defendant violated 47 U.S.C. §227(b)(1)(A)(iii) by utilizing an automatic telephone dialing system and/or an artificial or prerecorded voice to make and/or place telephone calls to Plaintiff's cellular telephone number.

22. Defendant knowingly or willingly violated 47 U.S.C. §227(b)(1)(A)(iii) by utilizing an automatic telephone dialing system and/or an artificial or pre-recorded voice to make and/or place telephone calls to Plaintiff's cellular telephone number.

23. As a result of Defendant's violations of 47 U.S.C. §227(b)(1)(A)(iii), Plaintiff is entitled to damages in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging and declaring that Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii);
- b) Enjoining Defendant from placing any further telephone calls to Plaintiff in violation of the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(A);
- c) Awarding Plaintiff statutory damages in the amount of \$500.00 per violation, pursuant to 47 U.S.C. § 227(b)(3)(B);
- d) Awarding Plaintiff actual damages, pursuant to 47 U.S.C. § 227(b)(3)(B);
- e) Awarding Plaintiff treble damages, pursuant to 47 U.S.C. § 227(b)(3);

- f) Awarding Plaintiff costs incurred in this action;
- g) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem just and proper.

**TRIAL BY JURY**

Plaintiff is entitled to and hereby demands a trial by jury.

This 6<sup>th</sup> day of March, 2014.

/s/ Michael L. Greenwald

Michael L. Greenwald  
Greenwald Davidson PLLC  
5550 Glades Road, Suite 500  
Boca Raton, FL 33431  
Telephone: (561) 826-5477  
Facsimile: (561) 961-5684  
mgreenwald@mgjdlaw.com

*Lead Counsel for Plaintiff*